



STATE OF UTAH
DEPARTMENT OF COMMERCE
DIVISION OF REAL ESTATE

RESIDENTIAL MORTGAGE STATUTE

June 2006

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DIVISION OF REAL ESTATE**

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**TITLE 61, CHAPTER 2.
DIVISION OF REAL ESTATE**

61-2-5. Division of Real Estate created -- Functions -- Director appointed -- Functions.

(1) There is created within the Department of Commerce a Division of Real Estate. It is responsible for the administration and enforcement of:

- (a) this chapter;
- (b) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;
- (c) Title 57, Chapter 19, Timeshare and Camp Resort Act;
- (d) Title 57, Chapter 23, Real Estate Cooperative Marketing Act;
- (e) Chapter 2a, Real Estate Education, Research, and Recovery Fund;
- (f) Chapter 2b, Real Estate Appraiser Licensing and Certification Act; and
- (g) Chapter 2c, Utah Residential Mortgage Practices Act.

(2) The division is under the direction and control of a director appointed by the executive director of the department with the approval of the governor. The director holds the office of director at the pleasure of the governor.

(3) The director, with the approval of the executive director, may employ personnel necessary to discharge the duties of the division at salaries to be fixed by the director according to standards established by the Department of Administrative Services.

(4) On or before October 1 of each year, the director shall, in conjunction with the department, report to the governor and the Legislature concerning the division's work for the preceding fiscal year ending June 30.

(5) The director, in conjunction with the executive director, shall prepare and submit to the governor and the Legislature a budget for the fiscal year next following the convening of the Legislature.

TITLE 61, CHAPTER 2c.
UTAH RESIDENTIAL MORTGAGE PRACTICES ACT

61-2c-101. Title.

This chapter is known as the "Utah Residential Mortgage Practices Act."

61-2c-102. Definitions.

(1) As used in this chapter:

- (a) "Affiliate" means an individual or an entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified individual or entity.
- (b) "Applicant" means an individual or entity applying for a license under this chapter.
- (c) "Associate lending manager" means a person who:
 - (i) has qualified under this chapter as a principal lending manager; and
 - (ii) works by or on behalf of another principal lending manager in transacting the business of residential mortgage loans.
- (d) "Branch office" means a licensed entity's office:
 - (i) for the transaction of the business of residential mortgage loans regulated under this chapter; and
 - (ii) other than the main office of the licensed entity.
- (e) (i) "Business of residential mortgage loans" means for compensation to:
 - (A) make or originate a residential mortgage loan;
 - (B) directly or indirectly solicit, place, or negotiate a residential mortgage loan for another; or
 - (C) render services related to the origination of a residential mortgage loan including:
 - (I) taking applications; and
 - (II) communicating with the borrower and lender.
- (ii) "Business of residential mortgage loans" does not include:
 - (A) the performance of clerical functions such as:
 - (I) gathering information related to a residential mortgage loan on behalf of the prospective borrower or a person licensed under this chapter; or
 - (II) requesting or gathering information, word processing, sending correspondence, or assembling files by an individual who works under the instruction of a person licensed under this chapter;
 - (B) ownership of an entity that engages in the business of residential mortgage loans if the owner does not personally perform the acts listed in Subsection (1)(e)(i);
 - (C) acting as a loan wholesaler;
 - (D) acting as an account executive for a loan wholesaler;
 - (E) acting as a loan underwriter;
 - (F) acting as a loan closer; or
 - (G) funding a loan.
- (f) "Closed-end" means a loan with a fixed amount borrowed and which does not permit additional borrowing secured by the same collateral.

- (g) "Commission" means the Residential Mortgage Regulatory Commission created in Section 61-2c-104.
- (h) "Compensation" means anything of economic value that is paid, loaned, granted, given, donated, or transferred to an individual or entity for or in consideration of:
- (i) services;
 - (ii) personal or real property; or
 - (iii) other thing of value.
- (i) "Control," as used in Subsection (1)(a), means the power to directly or indirectly:
- (i) direct or exercise a controlling interest over:
 - (A) the management or policies of an entity; or
 - (B) the election of a majority of the directors, officers, managers, or managing partners of an entity;
 - (ii) vote 20% or more of any class of voting securities of an entity by an individual; or
 - (iii) vote more than 5% of any class of voting securities of any entity by another entity.
- (j) "Control person" means an individual who is designated by an entity as the individual who directly manages or controls the entity's transaction of the business of residential mortgage loans secured by Utah dwellings.
- (k) "Depository institution" is as defined in Section 7-1-103.
- (l) "Director" means the director of the division.
- (m) "Division" means the Division of Real Estate.
- (n) "Dwelling" means a residential structure attached to real property that contains one to four units including any of the following if used as a residence:
- (i) a condominium unit;
 - (ii) a cooperative unit;
 - (iii) a manufactured home; or
 - (iv) a house.
- (o) "Entity" means any corporation, limited liability company, partnership, company, association, joint venture, business trust, trust, or other organization.
- (p) "Executive director" means the executive director of the Department of Commerce.
- (q) "Inactive status" means a dormant status into which an unexpired license is placed when the holder of the license is not currently engaging in the business of residential mortgage loans.
- (r) "Lending manager" or "principal lending manager" means a person licensed as a principal lending manager under Section 61-2c-206.
- (s) "Licensee" means an individual or entity licensed with the division under this chapter.
- (t) (i) Except as provided in Subsection (1)(t)(ii), "mortgage officer" means an individual who is licensed with the division to transact the business of residential mortgage loans through a principal lending manager.
- (ii) "Mortgage officer" does not include a principal lending manager.
- (u) "Record" means information that is:
- (i) prepared, owned, received, or retained by an individual or entity; and
 - (ii) (A) inscribed on a tangible medium; or
 - (B) (I) stored in an electronic or other medium; and
 - (II) retrievable in perceivable form.
- (v) "Registration" means the permission to engage in the business of residential mortgage loans issued by the division before January 1, 2004.

(w) "Residential mortgage loan" means a closed-end, first mortgage loan or extension of credit, if:

(i) the loan or extension of credit is secured by a:

- (A) mortgage;
- (B) deed of trust; or
- (C) lien interest; and

(ii) the mortgage, deed of trust, or lien interest described in Subsection (1)(w)(i):

- (A) is on a dwelling located in the state; and
- (B) created with the consent of the owner of the residential real property.

(x) "State" means:

- (i) a state, territory, or possession of the United States;
- (ii) the District of Columbia; or
- (iii) the Commonwealth of Puerto Rico.

(2) (a) If a term not defined in this section is defined by rule, the term shall have the meaning established by the division by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(b) If a term not defined in this section is not defined by rule, the term shall have the meaning commonly accepted in the business community.

61-2c-103. Powers and duties of the division.

(1) The division shall administer this chapter.

(2) In addition to any power or duty expressly provided in this chapter, the division may:

(a) receive and act on complaints including:

- (i) taking action designed to obtain voluntary compliance with this chapter; or
- (ii) commencing administrative or judicial proceedings on the division's own initiative;

(b) establish programs for the education of consumers with respect to residential mortgage loans;

(c) (i) make studies appropriate to effectuate the purposes and policies of this chapter; and
(ii) make the results of the studies described in Subsection (2)(c)(i) available to the public;

(d) visit and investigate an entity licensed under this chapter, regardless of whether the entity is located in Utah; and

(e) employ any necessary hearing examiners, investigators, clerks, and other employees and agents.

(3) The division shall make rules for the administration of this chapter in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, including:

(a) licensure procedures for:

- (i) individuals and entities required by this chapter to obtain a license with the division; and
- (ii) the establishment of a branch office by an entity;

(b) proper handling of funds received by licensees;

(c) record-keeping requirements by licensees; and

- (d) standards of conduct for licensees.
- (4) The division may make available to the public a list of the names and mailing addresses of all licensees:
 - (a) either directly or through a third party; and
 - (b) at a reasonable cost.
- (5) The division shall:
 - (a) certify education providers who offer:
 - (i) prelicensing education to candidates for licensure under this chapter; or
 - (ii) continuing education to individuals licensed under this chapter; and
 - (b) make available to the public, licensees, and candidates for licensure a list of the names and addresses of all education providers certified under this Subsection (5).
- (6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division shall make rules establishing:
 - (a) certification criteria and procedures for providers of prelicensing education and continuing education; and
 - (b) standards of conduct for certified education providers.
- (7) The division may charge a fee established in accordance with Section 63-38-3.2 for processing any of the changes that a licensee is required by Section 61-2c-205 to report to the division.

61-2c-104. Residential Mortgage Regulatory Commission.

- (1) (a) There is created within the division the Residential Mortgage Regulatory Commission consisting of the following members appointed by the executive director with the approval of the governor:
 - (i) four members having at least three years of experience in transacting the business of residential mortgage loans and who are currently licensed under this chapter; and
 - (ii) one member from the general public.
- (b) (i) The executive director with the approval of the governor may appoint an alternate member to the board.
- (ii) The alternate member shall:
 - (A) at the time of the appointment, have at least three years of experience in transacting the business of residential mortgage loans; and
 - (B) be licensed under this chapter at the time of and during appointment.
- (2) (a) Except as required by Subsection (2)(b), the executive director shall appoint each new member or reappointed member subject to appointment by the executive director to a four-year term ending June 30.
- (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.

- (c) If a vacancy occurs in the membership of the commission for any reason, the replacement shall be appointed for the unexpired term.
- (3) Members of the commission shall annually select one member to serve as chair.
- (4) (a) The commission shall meet at least quarterly.
- (b) The director may call a meeting in addition to the meetings required by Subsection (4)(a):
 - (i) at the discretion of the director;
 - (ii) at the request of the chair of the commission; or
 - (iii) at the written request of three or more commission members.
- (5) (a) Three members of the commission constitute a quorum for the transaction of business.
- (b) If a quorum of members is unavailable for any meeting and an alternate member has been appointed to the commission by the executive director with the approval of the governor, the alternate member shall serve as a regular member of the commission for that meeting if with the presence of the alternate member there is a quorum present at the meeting.
- (c) The action of a majority of a quorum present is an action of the commission.
- (6) (a)(i) A member who is not a government employee shall receive no compensation or benefits for the member's services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- (ii) A member who is not a government employee may decline to receive per diem and expenses for the member's service.
- (b) (i) A state government officer and employee member who does not receive salary, per diem, or expenses from the member's agency for the member's service may receive per diem and expenses incurred in the performance of the member's official duties from the commission at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- (ii) A state government officer and employee member may decline to receive per diem and expenses for the member's service.
- (7) The commission shall:
 - (a) except as provided in Subsection 61-2c-202(2), concur in the licensure or denial of licensure of individuals and entities under this chapter in accordance with Part 2, Licensure;
 - (b) take disciplinary action with the concurrence of the director in accordance with Part 4, Enforcement;
 - (c) advise the division concerning matters related to the administration and enforcement of this chapter; and
 - (d) with the concurrence of the division, determine the requirements for:
 - (i) the examination required under Section 61-2c-202, covering at least:
 - (A) the fundamentals of the English language;
 - (B) arithmetic;
 - (C) the provisions of this chapter;

- (D) rules adopted by the division;
- (E) basic residential mortgage principles and practices; and
- (F) any other aspect of Utah law the commission determines is appropriate;
- (ii) with the concurrence of the division, the continuing education requirements under Section 61-2c-205, including:
 - (A) except as provided in Subsection 61-2c-202(4)(a)(i)(C) and Subsection 61-2c-206(1)(c), the appropriate number of hours of prelicensing education and required continuing education; and
 - (B) the subject matter of courses the division may accept for continuing education purposes;
- (iii) with the concurrence of the division, the prelicensing education required under Sections 61-2c-202 and 61-2c-206, including online education or distance learning options; and
- (iv) the examination required under Section 61-2c-206 covering:
 - (A) advanced residential mortgage principles and practices; and
 - (B) other aspects of Utah law the commission, with the concurrence of the division, determines appropriate.

(8) The commission may appoint a committee to make recommendations to the commission concerning approval of prelicensing education and continuing education courses.

(9) The commission and the division shall make the examination and prelicensing education and continuing education requirements described in this section available through the Internet or other distance education methods approved by the commission and division when reasonably practicable.

(10) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission, with the concurrence of the division, shall make rules establishing procedures under which a licensee may be exempted from continuing education requirements:

- (a) for a period not to exceed four years; and
- (b) upon a finding of reasonable cause.

61-2c-105. Scope of chapter.

- (1) (a) This chapter applies to a closed-end residential mortgage loan secured by a first lien or equivalent security interest on a one to four unit dwelling.
- (b) This chapter does not apply to a transaction covered by Title 70C, Utah Consumer Credit Code.
- (2) The following are exempt from this chapter:
 - (a) the federal government;
 - (b) a state;
 - (c) a political subdivision of a state;
 - (d) an agency of or entity created by a governmental entity described in Subsections (2)(a) through (c) including:
 - (i) the Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing

- Corporation Act;
- (ii) the Federal National Mortgage Corporation;
- (iii) the Federal Home Loan Mortgage Corporation;
- (iv) the Federal Deposit Insurance Corporation;
- (v) the Resolution Trust Corporation;
- (vi) the Government National Mortgage Association;
- (vii) the Federal Housing Administration;
- (viii) the National Credit Union Administration;
- (ix) the Farmers Home Administration; and
- (x) the Department of Veterans Affairs;
- (e) a depository institution;
- (f) an affiliate of a depository institution;
- (g) an employee or agent of an entity described in Subsections (2)(a) through (f) when that person acts on behalf of the entity described in Subsections (2)(a) through (f);
- (h) an individual or entity:
 - (i) that makes a loan:
 - (A) secured by an interest in real property;
 - (B) with the individual's or the entity's own money; and
 - (C) for the individual's or entity's own investment; and
 - (ii) that does not engage in the business of making loans secured by an interest in real property;
- (i) an individual or entity who receives a mortgage, deed of trust, or lien interest on real property if the individual or entity:
 - (i) is the seller of real property; and
 - (ii) receives the mortgage, deed of trust, or lien interest on real property as security for a separate money obligation;
- (j) an individual or entity who receives a mortgage, deed of trust, or lien interest on real property if:
 - (i) the individual or entity receives the mortgage, deed of trust, or lien interest as security for an obligation payable on an installment or deferred payment basis;
 - (ii) the obligation described in Subsection (2)(j)(i) arises from an individual or entity providing materials or services used in the improvement of the real property that is the subject of the mortgage, deed of trust, or lien interest; and
 - (iii) the mortgage, deed of trust, or lien interest was created without the consent of the owner of the real property that is the subject of the mortgage, deed of trust, or lien interest;
- (k) a nonprofit corporation that:
 - (i) is exempt from paying federal income taxes;
 - (ii) is certified by the United States Small Business Administration as a small business investment company;
 - (iii) is organized to promote economic development in this state; and
 - (iv) has as its primary activity providing financing for business expansion;
- (l) a court appointed fiduciary; or
- (m) an attorney admitted to practice law in this state:
 - (i) if the attorney is not principally engaged in the business of negotiating residential mortgage loans; and

- (ii) when the attorney renders services in the course of the attorney's practice as an attorney.
- (3) (a) Notwithstanding Subsection (2)(m), an attorney exempt from this chapter may not engage in conduct described in Section 61-2c-301 when transacting business of residential mortgage loans.
- (b) If an attorney exempt from this chapter violates Subsection (3)(a), the attorney:
 - (i) is not subject to enforcement by the division under Part 4, Enforcement; and
 - (ii) is subject to disciplinary action generally applicable to an attorney admitted to practice law in this state.
 - (c) If the division receives a complaint alleging an attorney exempt from this chapter is in violation of Subsection (3)(a), the division shall forward the complaint to the Utah State Bar for disciplinary action.
- (4) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division shall, by rule, determine a date, on or after December 31, 2004, after which an individual who is exempt under Subsection (2) may voluntarily obtain a license pursuant to Subsection
- (b) (i) After the date described in Subsection (4)(a), an individual who is exempt under Subsection (2) may voluntarily obtain a license under this chapter by complying with Part 2, Licensure.
 - (ii) An individual who voluntarily obtains a license pursuant to this Subsection (4)(b) shall comply with all the provisions of this chapter.

61-2c-106. Addresses provided the division.

- (1) (a) In providing an address to the division under this chapter, a physical location or street address shall be provided.
- (b) The following are public information:
 - (i) a business address; or
 - (ii) a mailing address.
- (2) An individual or entity licensed under this chapter will be considered to have received any notification that is mailed to the last mailing address furnished to the division by the individual, or by the principal lending manager of the entity, licensed under this chapter.

61-2c-201. Licensure required of individuals and entities engaged in the business of residential mortgage loans -- Mortgage officer -- Principal lending manager.

- (1) Unless exempt from this chapter under Section 61-2c-105, an individual or entity may not transact the business of residential mortgage loans, as defined in Section 61-2c-102, without obtaining a license under this chapter.
- (2) For purposes of this chapter, an individual or entity transacts business in this state if:
 - (a) (i) the individual or entity engages in an act that constitutes the business of residential mortgage loans; and

- (ii) (A) the act described in Subsection (2)(a)(i) is directed to or received in this state; and
 - (B) the real property that is the subject of the act described in Subsection (2)(a)(i) is located in this state; or
 - (b) a representation is made by the individual or entity that the individual or entity transacts the business of residential mortgage loans in this state.
- (3) An individual who has an ownership interest in an entity required to be licensed under this chapter is not required to obtain an individual license under this chapter unless the individual transacts the business of residential mortgage loans.
- (4) Unless otherwise exempted under this chapter, licensure under this chapter is required of both:
- (a) the individual who directly transacts the business of residential mortgage loans; and
 - (b) if the individual transacts business as an employee or agent of an entity or individual, the entity or individual for whom the employee or agent transacts the business of residential mortgage loans.
- (5) (a) On or after May 1, 2006, a license issued under this chapter to an individual who has not obtained a license as a principal lending manager automatically converts to a mortgage officer license.
- (b) A mortgage officer license issued pursuant to Subsection (5)(a) shall be placed on inactive status until the holder of the license has submitted to the division the forms required to activate the license with a principal lending manager.
- (6) (a) An individual licensed under this chapter may not engage in the business of residential mortgage loans on behalf of more than one entity at the same time.
- (b) This Subsection (6) does not restrict the number of:
- (i) different lenders an individual or entity may use as a funding source for residential mortgage loans; or
 - (ii) entities in which an individual may have an ownership interest, regardless of whether the entities are:
 - (A) licensed under this chapter; or
 - (B) exempt under Section 61-2c-105.
- (7) An individual licensed under this chapter may not transact the business of residential mortgage loans for the following at the same time:
- (a) an entity licensed under this chapter; and
 - (b) an entity that is exempt from licensure under Section 61-2c-105.
- (8) On or after May 1, 2006, except as provided under Title 16, Chapter 11, Professional Corporation Act or under Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, a mortgage officer may not receive consideration for transacting the business of residential mortgage loans from any person or entity except the principal lending manager with whom the mortgage officer is licensed.

- (9) On or after May 1, 2006, a mortgage officer shall conduct all business of residential mortgage loans:
- (a) through the principal lending manager with which the individual is licensed; and
 - (b) in the business name under which the principal lending manager is authorized by the division to do business.
- (10)(a) (i) Subject to Subsection (10)(a)(ii) and until May 1, 2006, if an individual who is authorized by this chapter to transact the business of residential mortgage loans as an individual transacts the business of residential mortgage loans under an assumed business name, the individual shall:
- (A) register the assumed business name with the division; and
 - (B) furnish to the division proof that the assumed business name has been filed with the Division of Corporations and Commercial Code pursuant to Title 42, Chapter 2, Conducting Business Under Assumed Name.
- (ii) This Subsection (10)(a) does not apply to an individual who transacts the business of residential mortgage loans as an employee or agent of another individual or entity.
- (iii) If an entity that is authorized by this chapter to transact the business of residential mortgage loans transacts the business of residential mortgage loans under an assumed business name, the entity shall:
- (A) register the assumed name with the division; and
 - (B) furnish the division proof that the assumed business name has been filed with the Division of Corporations and Commercial Code pursuant to Title 42, Chapter 2, Conducting Business Under Assumed Name.
- (b) The division may charge a fee established in accordance with Section 63-38-3.2 for registering an assumed name pursuant to this Subsection (10).
- (11) (a) A licensee whose license is in inactive status may not transact the business of residential mortgage loans.
- (b) On or after May 1, 2006, a mortgage officer whose license has been placed in inactive status may not transact the business of residential mortgage loans until the mortgage officer has licensed with a principal lending manager by following the procedures established by the division by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, including submission of all required forms and payment of all required activation fees.
- (12) (a) On or after May 3, 2004 and before May 1, 2006, if a licensed entity terminates its control person, or if the control person of a licensed entity resigns, dies, or becomes unable to act as control person due to disability, the entity shall cease all business of residential mortgage loans until the entity has submitted all forms and fees to the division that are required to affiliate another control person with the licensed entity.
- (b) On or after May 1, 2006, if a licensed entity terminates its principal lending manager, or if the principal lending manager of a licensed entity resigns, dies, or becomes unable to act as a principal lending manager due to disability, the entity may not transact the business of residential mortgage loans until the entity has submitted all forms and fees to the division that are required to affiliate another principal lending manager with the entity.

61-2c-201.1. Conversion of registrations.

On January 1, 2004, any unexpired registration authorizing an individual or entity to engage in the business of residential mortgage loans automatically converts from a registration to a license, retaining the expiration date of the registration as the expiration date of the converted license.

61-2c-202. Licensure procedures.

- (1) To apply for licensure under this chapter an applicant shall:
 - (a) submit to the division a licensure statement that:
 - (i) lists any name under which the individual or entity will transact business in this state;
 - (ii) lists the address of the principal business location of the applicant;
 - (iii) on or after May 3, 2004 and before May 1, 2006, if the applicant is an entity:
 - (A) lists the control person of the applicant; and
 - (B) contains the signature of the control person;
 - (iv) on or after May 1, 2006, if the applicant is an entity:
 - (A) lists the principal lending manager of the entity; and
 - (B) contains the signature of the principal lending manager;
 - (v) demonstrates that the applicant meets the qualifications listed in Section 61-2c-203;
 - (vi) if the applicant is an entity, lists:
 - (A) all jurisdictions in which the entity is registered, licensed, or otherwise regulated in the business of residential mortgage loans; and
 - (B) the history of any disciplinary action or adverse administrative action taken against the entity by any regulatory agency within the ten years preceding the application; and
 - (vii) includes any information required by the division by rule;
 - (b) pay to the division:
 - (i) an application fee established by the division in accordance with Section 63-38-3.2; and
 - (ii) the reasonable expenses incurred in processing the application for licensure including the costs incurred by the division under Subsection (4); and
 - (c) comply with Subsection (4).
- (2)
 - (a) The division shall issue a license to an applicant if the division, with the concurrence of the commission, finds that the applicant:
 - (i) meets the qualifications of Section 61-2c-203; and
 - (ii) complies with this section.
 - (b) The commission may delegate to the division the authority to:
 - (i) review any class or category of application for initial or renewed licenses;
 - (ii) determine whether an applicant meets the licensing criteria in Section 61-2c-203;
 - (iii) conduct any necessary hearing on an application; and
 - (iv) approve or deny a license application without concurrence by the commission.
 - (c) If the commission delegates to the division the authority to approve or deny an application without concurrence by the commission and the division denies an application for licensure, the applicant who is denied licensure may petition the commission for review of the denial.

(d) An applicant who is denied licensure under this Subsection (2)(b) may seek agency review by the executive director only after the commission has reviewed the division's denial of the applicant's application.

(3) Subject to Subsection (2)(d) and in accordance with Title 63, Chapter 46b, Administrative Procedures Act, an applicant who is denied licensure under this chapter may submit a request for agency review to the executive director within 30 days following the issuance of the commission order denying the licensure.

(4) (a) (i) An individual applying for a license under this chapter and any control person of the applicant shall:

(A) submit a fingerprint card in a form acceptable to the division at the time the licensure statement is filed;

(B) consent to a fingerprint background check by:

(I) the Utah Bureau of Criminal Identification; and

(II) the Federal Bureau of Investigation;

(C) on or after January 1, 2005, provide proof using methods approved by the division of having successfully completed 20 hours of approved prelicensing education required by the commission under Section 61-2c-104 before taking the examination required by Subsection (4)(a)(i)(D); and

(D) provide proof using methods approved by the division of having successfully passed an examination approved by the commission under Section 61-2c-104.

(ii) Notwithstanding Subsections (4)(a)(i)(C) and (4)(a)(i)(D), an individual meeting the conditions of Subsection (4)(a)(iii) may engage in the business of residential mortgage loans until January 1, 2005 without having:

(A) completed the prelicensing education described in Subsection (4)(a)(i)(C); and

(B) passed the examination described in Subsection (4)(a)(i)(D).

(iii) Subsection (4)(a)(ii) applies to an individual:

(A) who was registered with the division under this chapter prior to January 1, 2004;

(B) whose registration was converted to a license under Section 61-2c-201.1; and

(C) whose converted license either:

(I) does not expire before January 1, 2005; or

(II) is renewed prior to January 1, 2005.

(b) The division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for each applicant and each control person of an applicant through a national criminal history system.

(c) The applicant shall pay the cost of:

(i) the fingerprinting required by this section; and

(ii) the background check required by this section.

(d) (i) A license under this chapter is conditional pending completion of the criminal background check required by this Subsection (4).

(ii) If a criminal background check discloses that an applicant or an applicant's control person failed to accurately disclose a criminal history, the license shall be immediately and automatically revoked.

(iii) An individual or entity whose conditional license is revoked under Subsection (4)(d)(ii) may appeal the revocation in a hearing conducted by the commission:

- (A) after the revocation; and
- (B) in accordance with Title 63, Chapter 46b, Administrative Procedures Act.
- (iv) The commission may delegate to the division or an administrative law judge the authority to conduct a hearing described in Subsection (4)(d)(iii).
- (v) Relief from a revocation may be granted only if:
 - (A) the criminal history upon which the division based the revocation:
 - (I) did not occur; or
 - (II) is the criminal history of another person;
 - (B) (I) the revocation is based on a failure to accurately disclose a criminal history; and
 - (II) the applicant had a reasonable good faith belief at the time of application that there was no criminal history to be disclosed; or
 - (C) the division failed to follow the prescribed procedure for the revocation.
- (e) If a revocation is upheld after a hearing described in Subsection (4)(d)(iii), the person may not apply for a new license for a period of 12 months or longer not to exceed five years after the revocation, as determined by the presiding officer.
- (f) The funds paid by an applicant for the cost of the background check shall be nonlapsing.
- (g) The commission may delegate to the division the authority to make a decision on whether relief from a revocation should be granted.

61-2c-203. Qualifications for licensure.

- (1) To qualify for licensure under this chapter, an individual:
 - (a) shall have good moral character and the competency to transact the business of residential mortgage loans;
 - (b) shall demonstrate honesty, integrity, and truthfulness;
 - (c) except as provided in Subsection (3), may not have been convicted in the ten years preceding the day on which an application is submitted to the division of:
 - (i) any felony or class A misdemeanor involving moral turpitude; or
 - (ii) any crime in any other jurisdiction that is the equivalent of a felony or class A misdemeanor involving moral turpitude;
 - (d) except as provided in Subsection (3), may not have been convicted in the five years preceding the day on which an application is submitted to the division of:
 - (i) any class B or class C misdemeanor involving moral turpitude; or
 - (ii) any crime in another jurisdiction that is the equivalent of a class B or class C misdemeanor involving moral turpitude;
 - (e) except as provided in Subsection (3), in relationship to a crime set forth in Subsections (1)(c) and (d) during the time period set forth in Subsections (1)(c) and (d), may not have:
 - (i) entered a guilty plea, a no contest plea, or its equivalent; and
 - (ii) resolved by diversion or its equivalent;
 - (f) except as provided in Subsection 61-2c-202(4)(e), may not have had a license or registration suspended, revoked, surrendered, canceled, or denied in the five years preceding the date the individual applies for licensure except as provided in Subsection (3), if:
 - (i) the registration or license is issued by this state or another jurisdiction; and
 - (ii) the suspension, revocation, surrender, probation, fine, cancellation, or denial is based on misconduct in a professional capacity that relates to moral character, honesty,

- integrity, truthfulness, or the competency to transact the business of residential mortgage loans;
- (g) except as provided in Subsection (3), may not have been the subject of a bar by the Securities and Exchange Commission, the New York Stock Exchange, or the National Association of Securities Dealers within the five years preceding the date the individual applies for registration; and
- (h) may not have had any temporary or permanent injunction entered against the individual:
 - (i) by a court or licensing agency; and
 - (ii) based on:
 - (A) conduct or a practice involving the business of residential mortgage loans; or
 - (B) conduct involving fraud, misrepresentation, or deceit.
- (2) To qualify for licensure under this chapter an entity may not have:
 - (a) any of the following individuals in management who fails to meet the requirements of Subsection (1):
 - (i) a manager or a managing partner;
 - (ii) a director;
 - (iii) an executive officer; or
 - (iv) an individual occupying a position or performing functions similar to those described in Subsections (2)(a)(i) through (iii); or
 - (b) (i) before May 1, 2006, a control person who fails to meet the requirements of Subsection (1); or
 - (ii) on or after May 1, 2006, a principal lending manager who fails to meet the requirements of Subsection (1).
- (3) Notwithstanding the failure to meet the requirements of Subsections (1)(c) through (h), the division may permit an individual or entity to be licensed under this chapter if the individual applicant or a person listed in Subsection (2):
 - (a) fails to meet the requirements of Subsections (1)(c) through (h);
 - (b) otherwise meets the qualifications for licensure; and
 - (c) provides evidence satisfactory to the division with the concurrence of the commission that the individual applicant or person described in Subsection (2):
 - (i) is of good moral character;
 - (ii) is honest;
 - (iii) has integrity;
 - (iv) is truthful; and
 - (v) has the competency to transact the business of residential mortgage loans.

61-2c-205. Term of licensure -- Renewal -- Reporting of changes.

- (1) (a) A license under this chapter is valid for a two-year period.
- (b) Notwithstanding Subsection (1)(a), the time period of a license may be extended or shortened by as much as one year to maintain or change a renewal cycle established by rule by the division.
- (2) To renew a license, no later than the date the license expires, a licensee shall:
 - (a) (i) file the renewal form required by the division; and

- (ii) furnish the information required by Subsection 61-2c-202(1);
 - (b) pay a fee to the division established by the division in accordance with Section 63-38-3.2; and
 - (c) if the licensee is an individual and the individual's license is in active status at the time of application for renewal, submit proof using forms approved by the division of having completed during the two years prior to application the continuing education required by the commission under Section 61-2c-104.
 - (3) (a) A licensee under this chapter shall notify the division using the form required by the division within ten days of the date on which there is a change in:
 - (i) a name under which the licensee transacts the business of residential mortgage loans in this state;
 - (ii) (A) if the licensee is an entity, the business location of the licensee; or
(B) if the licensee is an individual, the home and business addresses of the individual;
 - (iii) (A) on or after May 3, 2004 and before May 1, 2006, the control person of the licensee; or
(B) on or after May 1, 2006, the principal lending manager of the entity;
 - (iv) the entity with which an individual licensee is licensed to conduct the business of residential mortgage loans; or
 - (v) any other information that is defined as material by rule made by the division. - (b) Failure to notify the division of a change described in Subsection (3)(a) is separate grounds for disciplinary action against a licensee.
- (4) A licensee shall notify the division by sending the division a signed statement within ten business days of:
 - (a) (i) a conviction of any criminal offense;
 - (ii) the entry of a plea in abeyance to any criminal offense; or
 - (iii) the potential resolution of any criminal case by:
 - (A) a diversion agreement; or
 - (B) any other agreement under which criminal charges are held in suspense for a period of time;
 - (b) filing a personal bankruptcy or bankruptcy of a business that transacts the business of residential mortgage loans;
 - (c) the suspension, revocation, surrender, cancellation, or denial of a professional license or professional registration of the licensee, whether the license or registration is issued by this state or another jurisdiction; or
 - (d) the entry of a cease and desist order or a temporary or permanent injunction:
 - (i) against the licensee by a court or licensing agency; and
 - (ii) based on:
 - (A) conduct or a practice involving the business of residential mortgage loans; or
 - (B) conduct involving fraud, misrepresentation, or deceit.
- (5) (a) A license under this chapter expires if the licensee does not apply to renew the license on or before the expiration date of the license.
- (b) Within 30 calendar days after the expiration date, a licensee whose license has expired

may apply to reinstate the expired license upon:

- (i) payment of a renewal fee and a late fee determined by the division under Section 63-38-3.2; and
 - (ii) if the licensee is an individual and is applying to reinstate a license to active status, providing proof using forms approved by the division of having completed, during the two years prior to application, the continuing education required by the commission under Section 61-2c-104.
- (c) After the 30 calendar days described in Subsection (5)(b) and within six months after the expiration date, a licensee whose license has expired may apply to reinstate an expired license upon:
- (i) payment of a renewal fee and a late fee determined by the division under Section 63-38-3.2;
 - (ii) if the licensee is an individual and is applying to reinstate a license to active status, providing proof using forms approved by the division of having completed, during the two years prior to application, the continuing education required by the commission under Section 61-2c-104; and
 - (iii) in addition to the continuing education required for a timely renewal, completing an additional 12 hours of continuing education approved by the commission under Section 61-2c-104.
- (d) A licensee whose license has been expired for more than six months shall be relicensed as prescribed for an original application under Section 61-2c-202.

61-2c-206. Lending manager licenses.

(1) Except as provided in Subsection (2), on or after January 1, 2006, to qualify as a principal lending manager under this chapter, an individual shall, in addition to meeting the standards in Section 61-2c-203:

- (a) submit an application on a form approved by the division;
- (b) pay fees determined by the division under Section 63-38-3.2;
- (c) submit proof of having successfully completed 40 hours of prelicensing education approved by the commission under Section 61-2c-104;
- (d) submit proof of having successfully completed the principal lending manager examination approved by the commission under Section 61-2c-104;
- (e) submit proof on forms approved by the division of three years of full-time active experience as a mortgage officer in the five years preceding the day on which the application is submitted, or its equivalent as approved by the commission; and
- (f) if the individual is not licensed under this chapter at the time of application, submit to the background check required by Subsection 61-2c-202(4).

(2) (a) Notwithstanding Subsection (1), an individual described in Subsection (2)(b) may qualify as a principal lending manager without:

- (i) meeting the requirements of Subsection (1)(c); and
- (ii) completing the portions of the principal lending manager examination described in Subsection (1)(d) that:
 - (A) relate to federal law; and
 - (B) do not relate to Utah law.

(b) An individual may qualify as a principal lending manager pursuant to Subsection (2)(a) if the individual:

(i) submits to the division an affidavit that the individual has five years of experience in the business of residential mortgage loans;

(ii) establishes that the individual's experience described in this Subsection (2)(b) was acquired:

(A) under requirements substantially equivalent to the requirements of this chapter; and

(B) in compliance with the requirements of this chapter; and

(iii) provides any other information required by the division by rule under Subsection (2)(c).

(c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division shall define the information an individual shall provide to the division pursuant to Subsection (2)(b).

(3) A principal lending manager may not engage in the business of residential mortgage loans on behalf of more than one entity at the same time.

61-2c-207. Reciprocal licensure.

(1) The division may enter into a reciprocity agreement with another state and issue a reciprocal license to a licensee of that state if the division determines that the:

(a) state has substantially equivalent licensing laws;

(b) state requires a licensing examination that is substantially equivalent to the examination required by this chapter; and

(c) licensee has not had:

(i) formal charges alleging a violation of state mortgage laws filed against the licensee; or

(ii) disciplinary action or license restriction taken by the licensee's state of domicile.

(2) The division may issue a reciprocal license to a licensee of a state with which the division does not have a reciprocity agreement if the individual:

(a) submits to the division an affidavit that the individual has five years of experience in the business of residential mortgage loans;

(b) establishes that the individual's experience described in Subsection (2)(a) was under requirements substantially equivalent to the licensing requirements of this chapter; and

(c) provides any other information required by the division by rule under Subsection (3).

(3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division shall define the information an individual shall provide to the division pursuant to Subsection (2).

61-2c-208. Activation and inactivation of license.

(1) (a) A licensee may request that the division place the license on inactive status by submitting an inactivation form approved by the division.

(b) On or after May 1, 2006, if the license of a principal lending manager is revoked, suspended, or expires, the license of any mortgage officer licensed with that principal lending manager shall automatically convert to inactive status.

- (2) To activate a license that has been placed on inactive status, a licensee shall:
- (a) submit an activation form approved by the division;
 - (b) pay an activation fee established by the division under Section 63-38-3.2; and
 - (c) if the licensee is an individual whose license was in inactive status at the time of the previous renewal, the licensee shall supply the division with proof of the successful completion of the number of hours of continuing education that the licensee would have been required to complete under Subsection 61-2c-205(2)(c) if the licensee's license had been on active status, up to a maximum of the number of hours required for two licensing periods.
- (3) On or after May 1, 2006, in addition to the requirements of Subsection (2), a mortgage officer whose license has been placed on inactive status shall obtain the signature of the principal lending manager with whom the mortgage officer will be actively licensed on the form required by the division.
- (4) (a) On or after May 3, 2004 and before May 1, 2006, in addition to the requirements of Subsection (2), an entity whose license has been placed on inactive status because of the termination, death, disability, or departure of its control person shall submit the forms required by the division to affiliate the license of another control person with the entity.
- (b) On or after May 1, 2006, in addition to the requirements of Subsection (2), an entity whose license has been placed on inactive status because of the termination, death, disability, or departure of its principal lending manager shall submit the forms required by the division to affiliate the license of another principal lending manager with the entity.

61-2c-301. Prohibited conduct -- Violations of the chapter.

- (1) An individual or entity transacting the business of residential mortgage loans in this state may not:
- (a) give or receive compensation or anything of value in exchange for a referral of residential mortgage loan business;
 - (b) charge a fee in connection with a residential mortgage loan transaction:
 - (i) that is excessive; or
 - (ii) if the individual or entity does not comply with Section 70D-1-6;
 - (c) give or receive compensation or anything of value in exchange for a referral of settlement or loan closing services related to a residential mortgage loan transaction;
 - (d) do any of the following to induce a lender to extend credit as part of a residential mortgage loan transaction:
 - (i) make a false statement or representation;
 - (ii) cause false documents to be generated; or
 - (iii) knowingly permit false information to be submitted by any party;
 - (e) give or receive compensation or anything of value, or withhold or threaten to withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in reaching a value conclusion in a residential mortgage loan transaction, except that it is not a

violation of this section for a licensee to withhold payment because of a bona fide dispute regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards of Professional Appraisal Practice;

(f) violate or not comply with:

- (i) this chapter;
- (ii) an order of the commission or division; or
- (iii) a rule made by the division;

(g) fail to respond within the required time period to:

- (i) a notice or complaint of the division; or
- (ii) a request for information from the division;

(h) make false representations to the division, including in a licensure statement;

(i) for any residential mortgage loan transaction beginning on or after January 1, 2004, engage in the business of residential mortgage loans with respect to the transaction if the individual or entity also acts in any of the following capacities with respect to the same residential mortgage loan transaction:

- (i) appraiser;
- (ii) escrow agent;
- (iii) real estate agent;
- (iv) general contractor; or
- (v) title insurance agent;

(j) order a title insurance report or hold a title insurance policy unless the individual or entity provides to the title insurer a copy of a valid, current license under this chapter;

(k) engage in unprofessional conduct as defined by rule;

(l) engage in an act or omission in transacting the business of residential mortgage loans that constitutes dishonesty, fraud, or misrepresentation;

(m) engage in false or misleading advertising;

(n) (i) fail to account for all funds received in connection with a residential mortgage loan;

(ii) use funds for a different purpose from the purpose for which the funds were received;
or

(iii) except as provided in Subsection (4), retain funds paid for services if the services were not actually performed;

(o) fail, within 90 calendar days of a request from a borrower who has paid for an appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower;

(p) engage in an act that is performed to:

- (i) evade this chapter; or
- (ii) assist another person to evade this chapter;

(q) recommend or encourage default or delinquency, or continuation of an existing default or delinquency, by a mortgage applicant on an existing indebtedness prior to the closing of a residential mortgage loan that will refinance all or part of the indebtedness;

(r) in the case of a control person of an entity, fail to exercise reasonable supervision over the activities of:

- (i) the individuals engaged in the business of residential mortgage loans on behalf of the entity; or
- (ii) any unlicensed staff;

(s) on or after May 1, 2006, in the case of the principal lending manager of an entity or a branch office of an entity, fail to exercise reasonable supervision over the activities of the

mortgage officers who are licensed with the principal lending manager; or

(t) pay or offer to pay an individual who does not hold a license under this chapter for work that requires the individual to hold a license under this chapter.

(2) Whether or not the crime is related to the business of residential mortgage loans, it is a violation of this chapter for a licensee, a control person of a licensee, or a person who is a certified education provider to do any of the following with respect to a criminal offense which involves moral turpitude:

- (a) be convicted;
- (b) plead guilty or nolo contendere;
- (c) enter a plea in abeyance; or
- (d) be subjected to a criminal disposition similar to the ones described in Subsections (2)(a) through (c).

(3) A principal lending manager does not violate Subsection (1)(s) if:

- (a) in contravention of the principal lending manager's written policies and instructions, an affiliated licensee of the principal lending manager violates a provision of:
 - (i) this chapter; or
 - (ii) rules made by the division under this chapter;
- (b) the principal lending manager established and followed reasonable procedures to ensure that affiliated licensees receive adequate supervision;
- (c) upon learning of a violation by an affiliated licensee, the principal lending manager attempted to prevent or mitigate the damage;
- (d) the principal lending manager did not participate in or ratify the violation by an affiliated licensee; and
- (e) the principal lending manager did not attempt to avoid learning of the violation.

(4) Notwithstanding Subsection (1)(n)(iii), a licensee may, upon compliance with Section 70D-1-6, charge a reasonable cancellation fee for work done originating a mortgage if the mortgage is not closed.

61-2c-302. Record requirements.

(1) For the time period specified in Subsection (2), a licensee shall make or possess any record required for that licensee by a rule made by the division.

(2) A licensee shall maintain in its possession a record described in Subsection (1) until the later of four years from the last to occur of the following:

- (a) the final entry on a residential mortgage loan is made by that licensee;
- (b) if the residential mortgage loan is serviced by the licensee:
 - (i) the residential mortgage loan is paid in full; or
 - (ii) the licensee ceases to service the residential mortgage loan; or
- (c) if the residential mortgage loan is not serviced by the licensee, the residential mortgage loan is closed.

(3) A licensee shall:

- (a) make available to the division for inspection during normal business hours all records required to be maintained under this chapter; and
- (b) upon reasonable notice from the division to a licensee, produce all records described in Subsection (3)(a) that are related to an investigation being conducted by the division at the division office for inspection and copying by the division.

(4) A licensed entity shall maintain and produce for inspection by the division a current list of all individuals whose licenses are affiliated with the entity.

61-2c-401. Investigations -- Subpoena power of division.

(1) The division may investigate or cause to be investigated the actions of:

- (a) (i) a licensee; or
- (ii) the following with respect to an entity that is a licensee:
 - (A) a control person;
 - (B) a manager;
 - (C) a managing partner;
 - (D) a director;
 - (E) an executive officer; or
 - (F) an individual who performs a function similar to an individual listed in this Subsection (1)(a)(ii);
- (b) (i) an applicant for licensure under this chapter; or
- (ii) the following with respect to an entity that has applied for a license under this chapter:
 - (A) a control person;
 - (B) a manager;
 - (C) a managing partner;
 - (D) a director;
 - (E) an executive officer; or
 - (F) an individual who performs a function similar to an individual listed in this Subsection (1)(b)(ii); or
- (c) any individual or entity that transacts the business of residential mortgage loans within this state, and the control persons of any such entity.

(2) In conducting investigations, records inspections, and adjudicative proceedings, the division may:

- (a) subpoena witnesses;
- (b) take evidence;
- (c) require by subpoena duces tecum the production of books, papers, contracts, records, other documents, or information considered relevant to an investigation; and
- (d) serve a subpoena by certified mail.

(3) A failure to respond to a subpoena served by the division is considered as a separate violation of this chapter.

(4) The division may inspect all records related to the business of residential mortgage loans by

a licensee under this chapter, regardless of whether the records are maintained at a business location in Utah, in conducting:

- (a) investigations of complaints; or
- (b) inspections of the records required to be maintained under:
 - (i) this chapter; or
 - (ii) rules adopted by the division under this chapter.

- (5) (a) If a licensee maintains the records required by this chapter and the rules adopted by the division under this chapter outside Utah, the licensee is responsible for all reasonable costs, including reasonable travel costs, incurred by the division in inspecting those records.
 - (b) Upon receipt of notification from the division that records maintained outside Utah are to be examined in connection with an investigation or an examination, the licensee shall deposit with the division a deposit of \$500 to cover the division's expenses in connection with the examination of the records.
 - (c) If the deposit described in Subsection (5)(b) is insufficient to meet the estimated costs and expenses of examination of the records, the licensee shall make an additional deposit to cover the estimated costs and expenses of the division.
 - (d) (i) All deposits under this Subsection (5) shall be deposited in the General Fund as a dedicated credit to be used by the division under Subsection (5)(a).
 - (ii) The division, with the concurrence of the executive director, may use the deposit monies deposited in the General Fund under this Subsection (5)(d) as a dedicated credit for the records inspection costs under Subsection (5)(a).
 - (iii) A deposit under this Subsection (5) shall be refunded to the licensee to the extent it is not used, together with an itemized statement from the division of all amounts it has used.
 - (e) All deposits under this Subsection (5) shall be nonlapsing.
- (6) Failure to deposit with the division a deposit required to cover the costs of examination of records that are maintained outside Utah shall result in automatic suspension of a license until the deposit is made.

61-2c-402. Disciplinary action -- Reinstatement -- Education providers.

- (1) Subject to the requirements of Section 61-2c-402.1, if an individual or entity required to be licensed under this chapter violates this chapter, or an education provider required to be certified under this chapter violates this chapter, the commission, with the concurrence of the director, may:
- (a) impose a civil penalty against the individual or entity in an amount not to exceed \$2,500 per violation;
 - (b) do any of the following to a license under this chapter:
 - (i) suspend;
 - (ii) revoke;
 - (iii) place on probation;
 - (iv) deny renewal; or
 - (v) deny reinstatement; or
 - (c) do both Subsections (1)(a) and (b).

- (2) (a) If a license under this chapter is revoked, the individual or entity may apply to have the license reinstated by complying with the requirements of Section 61-2c-202 for licensure.
- (b) Notwithstanding Subsection (2)(a) and except as provided in Subsection 61-2c-202(4)(e), if a license under this chapter is revoked, the individual or entity may not apply for reinstatement of the license sooner than five years after the day on which the license is revoked in accordance with this section.
- (c) If an individual or entity whose license has been revoked applies for reinstatement in accordance with Subsection (2)(b), the presiding officer may grant the application for reinstatement if the presiding officer finds that:
- (i) (A) there has been good conduct on the part of the applicant subsequent to the events that led to the revocation; and
 - (B) the subsequent good conduct outweighs the events that led to the revocation; and
 - (ii) the interest of the public is not likely to be harmed by the granting of the license.
- (3) Subject to the requirements of Section 61-2c-402.1, if an individual or entity required to be licensed under this chapter violates this chapter, or an education provider required to be certified under this chapter violates this chapter, the presiding officer in an adjudicative proceeding commenced after a person or an entity applies for an original or renewed license may:
- (a) deny an application for an original license;
 - (b) deny an application for renewal;
 - (c) deny an application for reinstatement; or
 - (d) issue or renew the license but:
 - (i) place the license on probation;
 - (ii) suspend the license for a period of time;
 - (iii) impose a civil penalty not to exceed \$2,500 per violation; or
 - (iv) any combination of Subsections (3)(d)(i) through (iii).

61-2c-402.1. Adjudicative proceedings -- Review.

- (1) (a) Before the actions described in Section 61-2c-402 may be taken, the division shall:
- (i) give notice to the individual or entity; and
 - (ii) commence an adjudicative proceeding.
- (b) If after the adjudicative proceeding is commenced under Subsection (1)(a) the presiding officer determines that an individual or entity required to be licensed under this chapter has violated this chapter, the division may take an action described in Section 61-2c-402 by written order.
- (2) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, an individual or entity against whom action is taken under this section may seek review by the executive director of the action.
- (3) If an individual or entity prevails in a judicial appeal and the court finds that the state action was undertaken without substantial justification, the court may award reasonable litigation expenses to that individual or entity as provided under Title 78, Chapter 27a, Small Business Equal Access to Justice Act.

- (4) (a) An order issued under this section takes effect 30 days after the service of the order unless otherwise provided in the order.
 - (b) If an appeal of an order issued under this section is taken by an individual or entity, the division may stay enforcement of the order in accordance with Section 63-46b-18.
- (5) If ordered by the court of competent jurisdiction, the division shall promptly take an action described in Section 61-2c-402 against a license granted under this chapter.

61-2c-403. Cease and desist orders.

- (1) (a) The director may issue and serve by certified mail, or by personal service, on an individual or entity an order to cease and desist if:
 - (i) the director has reason to believe that the individual or entity has been or is engaging in acts constituting a violation of this chapter; and
 - (ii) it appears to the director that it would be in the public interest to stop the acts.(b) Within ten days after service of the order, the party named in the order may request an adjudicative proceeding to be held in accordance with Title 63, Chapter 46b, Administrative Procedures Act.
 - (c) Pending the hearing, the cease and desist order shall remain in effect.
- (2) (a) After the hearing described in Subsection (1), if the director finds that the acts of the individual or entity violate this chapter, the director shall issue an order making the cease and desist order permanent.
- (b) (i) The director may file suit in the name of the division to enjoin and restrain an individual or entity on whom an order is served under this section from violating this chapter if:
 - (A) (I) the individual or entity did not request a hearing under Subsection (1); or
 - (II) a permanent cease and desist order is issued against the individual or entity following a hearing or stipulation; and
 - (B) (I) the individual or entity fails to cease the acts; or
 - (II) after discontinuing the acts, the individual or entity again commences the acts.(ii) The suit described in Subsection (2)(b)(i) shall be filed in the district court in the county:
 - (A) in which the acts occurred;
 - (B) where the individual resides; or
 - (C) where the individual or entity carries on business.
- (3) The cease and desist order issued under this section may not interfere with or prevent the prosecution of a remedy or action enforcement under this chapter.
- (4) An individual who violates a cease and desist order issued under this section is guilty of a class A misdemeanor.

61-2c-404. Civil actions.

- (1) (a) A person who violates this chapter is liable for an additional penalty, as determined by the court, of at least the amount the person received in consequence of a violation of this chapter as:
 - (i) commission;
 - (ii) compensation; or
 - (iii) profit.(b) A person aggrieved by a violation of this chapter may:
 - (i) bring an action for a penalty described in Subsection (1)(a); and
 - (ii) use a penalty obtained under Subsection (1)(a) for the person's own use and benefit.
- (2) A person who is not licensed under this chapter at the time of an act or service that requires a license under this chapter may not bring an action in court for the recovery of a commission, fee, or compensation for that act or service.
- (3) On or after May 1, 2006:
 - (a) a mortgage officer may not bring an action in the mortgage officer's own name for the recovery of a fee, commission, or compensation for transacting the business of residential mortgage loans unless the action is brought against the principal lending manager with whom the mortgage officer was licensed at the time of the act or service that is the subject of the action; and
 - (b) an action by an entity for the recovery of a fee, commission, or other compensation shall be brought by:
 - (i) an entity; or
 - (ii) the principal lending manager of an entity on behalf of the entity.
- (4) On or after May 1, 2006, a principal lending manager who transacts the business of residential mortgage loans on the principal lending manager's own behalf may sue in the principal lending manager's own name for the recovery of a fee, commission, or compensation for transacting the business of residential mortgage loans.

61-2c-501. Fund created -- Minimum balance.

- (1) There is created a restricted special revenue fund known as the "Residential Mortgage Loan Education, Research, and Recovery Fund."
- (2) The interest earned on the fund shall be deposited into the fund.
- (3) At the beginning of each state fiscal year, \$100,000 shall remain available in the fund to satisfy judgments rendered against individuals and entities licensed under this chapter.

61-2c-502. Additional license fee.

- (1) An individual who applies for or renews a license shall pay, in addition to the application or renewal fee, a reasonable annual fee:

- (a) determined by the division with the concurrence of the commission; and
- (b) not to exceed \$18.

(2) An entity that applies for or renews an entity license shall pay, in addition to the application or renewal fee, a reasonable annual fee:

- (a) determined by the division with the concurrence of the commission; and
- (b) not to exceed \$25.

(3) Notwithstanding Section 13-1-2, the fees provided in this section shall be paid into the fund to be used as provided in this part.

(4) If the balance in the fund that is available to satisfy judgments against licensees decreases to less than \$100,000, the division may make additional assessments to licensees to maintain the balance available at \$100,000 to satisfy judgments.

61-2c-503. Notice to division -- Judgment against mortgage licensee -- Fraud, misrepresentation, or deceit -- Verified petition for order directing payment from fund -- Limitations and procedure.

- (1) (a) A person may bring a claim against the fund if the person sends a signed notification to the division at the time the person files an action:
 - (i) against a licensee; and
 - (ii) alleging fraud, misrepresentation, or deceit.(b) Within 30 calendar days of receipt of the notice described in Subsection (1)(a), the division may intervene in the action.
- (c) If a person making a claim against the fund obtains a final judgment in a court of competent jurisdiction in Utah against a licensee based on fraud, misrepresentation, or deceit in a residential mortgage loan transaction, the person making the claim may, upon termination of all proceedings including appeals, file a verified petition in the court where the judgment was entered for an order directing payment from the fund for the uncollected actual damages included in the judgment.
- (d) A recovery from the fund may not include punitive damages, interest, or court costs.
- (e) Regardless of the number of claimants or number of loans involved in a transaction, the liability of the fund may not exceed:
 - (i) \$15,000 for a single transaction;
 - (ii) \$45,000 for an individual licensee; or
 - (iii) \$45,000 for an entity.
- (2) A person making a claim against the fund shall:
 - (a) serve a copy of the petition on the division; and
 - (b) file a copy of the affidavit of the service of the petition described in Subsection (2)(a) with the court.
- (3) (a) The court shall conduct a hearing on the petition within 30 calendar days after service.
- (b) The petitioner shall recover from the fund only if the petitioner shows:
 - (i) that the petitioner is not:

- (A) the spouse of the judgment debtor; or
- (B) the personal representative of the spouse of the judgment debtor;
- (ii) that the petitioner has complied with this chapter;
- (iii) that the petitioner has obtained a final judgment in the manner prescribed under this section, indicating the amount of the judgment awarded;
- (iv) that the petitioner has proved the amount still owing on the judgment at the date of the petition;
- (v) (A) that:
 - (I) the petitioner has a writ of execution issued upon the judgment; and
 - (II) the officer executing the writ has made a return showing that no property subject to execution in satisfaction of the judgment could be found; and
- (B) if execution is levied against the property of the judgment debtor, that:
 - (I) the amount realized was insufficient to satisfy the judgment; and
 - (II) a balance remains on the judgment after application of the amount realized; and
- (vi) that the petitioner has:
 - (A) made reasonable searches and inquiries to ascertain whether the judgment debtor has any interest in property, real or personal, that may satisfy the judgment; and
 - (B) has exercised reasonable diligence to secure payment of the judgment from the assets of the judgment debtor.

(4) If the petitioner satisfies the court that it is not practicable for the petitioner to comply with one or more of the requirements in Subsections (3)(b)(v) and (3)(b)(vi), the court may waive those requirements.

- (5) (a) A judgment that is the basis for a claim against the fund may not have been discharged in bankruptcy.
- (b) In the case of a bankruptcy proceeding that is open or that is commenced during the pendency of the claim, the claimant shall, prior to obtaining a claim against the fund, obtain an order from the bankruptcy court declaring the judgment and debt to be nondischargeable.

61-2c-504. Authority to act on receipt of petition.

- (1) Upon receipt of a petition meeting the requirements of Section 61-2c-503, the division may answer, initiate review proceedings, or appear in a proceeding:
 - (a) in the name of the defendant to the action; or
 - (b) on behalf of the fund.
- (2) The division may settle a claim subject to:
 - (a) the application of a petitioner; and
 - (b) court approval.

61-2c-505. Court determination and order.

If the court determines that a claim should be levied against the portion of the fund allocated to carry out the provisions of this chapter, the court shall enter an order requiring the division to pay

from the fund the portion of the petitioner's judgment that is payable from the fund under Section 61-2c-503.

61-2c-506. Insufficient funds to satisfy judgment -- Procedure and interest.

If the money deposited in the fund and allotted for satisfying judgments against licensees is insufficient to satisfy an authorized claim for payment, the division shall, when sufficient money has been deposited in the fund, satisfy the unpaid claims in the order they originally were filed, together with accumulated interest at the rate allowable on judgments under Section 15-1-4.

61-2c-507. Division subrogated to judgment creditor -- Authority to revoke license.

- (1) If the division pays a judgment creditor from the fund:
 - (a) the division is subrogated to the rights of the judgment creditor for the amounts paid out of the fund; and
 - (b) any amount and interest recovered by the division shall be deposited in the fund.
- (2) The license of a licensee for whom payment from the fund is made under this part is automatically revoked.
- (3) A licensee whose license is revoked pursuant to Subsection (2) may not apply for a new license until the licensee has paid into the fund:
 - (a) the amount paid out of the fund on behalf of the licensee; and
 - (b) interest at a rate determined by the division with the concurrence of the commission.

61-2c-508. Failure to comply.

The failure of a person to comply with this part is a waiver of any right provided under this part.

61-2c-509. Disciplinary actions.

- (1) This part does not limit the authority of the director to take disciplinary action against a licensee for a violation of:
 - (a) this chapter; or
 - (b) rules made by the division under this chapter.
- (2) The repayment in full of all obligations to the fund by a licensee does not nullify or modify the effect of a disciplinary proceeding brought under:
 - (a) this chapter; or
 - (b) rules made by the division under this chapter.

61-2c-510. Monies accumulated -- Purpose.

The division may use monies accumulated in the fund in excess of the amount necessary to satisfy claims to advance education and research in the field of residential mortgage loans, including:

- (1) courses sponsored by the division;
- (2) courses offered by the division in conjunction with a university or college in Utah;
- (3) contracting for a research project for the state in the field of residential mortgage loans;
- (4) funding the salaries and training expenses of division staff members who are employed in positions related to the education of mortgage licensees;
- (5) funding the training expenses of division staff members who are employed in positions conducting investigations of complaints under this chapter; and
- (6) publishing and distributing educational materials to:
 - (a) licensees; and
 - (b) applicants for licensure.

TITLE 70D, CHAPTER 01
MORTGAGE LENDING AND SERVICING ACT

70D-1-6. Fee restrictions.

No mortgage lender or broker may accept any fee or deposit from an applicant for a mortgage loan unless at the time the lender or broker accepts the fee there is a written statement signed by the applicant stating whether or not the deposit is refundable and describing the conditions under which all or a portion of the deposit will be refunded to the applicant.